FARAD CONTINUTION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Second Appeal No.l339 of 2005
with
Civil Appn No.686 of 2005

Office Notes,Office Memorandum of Coram appearence,Court's Orders & Directors and Registrar's Order	Court or Judge's Order

Mr P.G.Chavan for appellant

CORAM; A.M.KHANWILKAR J.

DATED 2.3.2006

P.C.

. Heard the learned counsel for the appellant. In so far as the finding of fact reached by the courts below that the suit document dated l6.4.l964 was not out and out sale needs no interference. That is the concurrent view taken by the courts below and a just view on the basis of the evidence on record. No substantial question of law has been raised which warrants interference in this appeal.

. The counsel for the appellant,

however, submits that the appellant has been found to be in possession of the suit property as noted by the trial court in para ll of its judgment and para l5 by the appeal court. It is submitted that even if the issue regarding efficacy of two documents is answered against the appellant, that will not permit the plaintiff to dispossess the appellant without following due process of law. That is not the scope of the issue raised in the present proceedings. I am not required to consider the effect of the possession of the appellant in the suit property. Suffice it to observe that if the appellant is in possession of the suit property they can be dispossessed only after following due process of law.

. It was then contended on behalf of the appellant that clause 3 of the operative order passed by the trial court which has been confirmed by the appeal court clearly provides that if the plaintiff fails to make deposit

specified in terms of clause 2 of the operative order within the prescribed time or extended time, defendant nos.l and 2 would be entitled to apply for foreclosure of the plaintiff's half share in the suit property in which case the plaintiff will be finally debarred from claiming any right under the mortgage. According to the appellant, plaintiff has failed to comply with this obligation of deposit of the amount within specified time and there has been no extension of time granted by the court so far. In the circumstances the appellants are entitled to apply for foreclosure of the mortgage. Those aspects will have to be considered in appropriate proceedings to be resorted to by the appellants. For the time being it is sufficient to observe that the present appeal does not raise any substantial question of law. The aforesaid issue raised in the present appeal, by the appellants, will have to be decided on its own merits in accordance with law in appropriate proceedings.

. Appeal as well as civil application is dismissed.